



0057531

RECEIVED
JUN 28 2002**EDMC**

**TENTATIVE AGREEMENT ON
THE REMOVAL OF HANFORD HIGH LEVEL WASTE TANK
INTERIM STABILIZATION REQUIREMENTS FROM THE SCOPE OF THE
HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER**

The Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA), as amended, includes requirements governing the removal of pumpable liquid waste (interim stabilization) from the U. S. Department of Energy's (DOE's) Single-Shell tanks (SSTs). These requirements are largely contained within the Tri-Party Agreement's Major milestone series M-41-00, and, in the case of SST C-103, at TPA interim milestone M-40-07.

Over this past year the Washington Department of Ecology (Ecology) and the DOE have worked with one another in an effort to reach agreement on revised interim stabilization program requirements designed to avoid further project delay, to effectively drive completion of the interim stabilization project, and to reduce risks sooner. To this end, Ecology, DOE, the Washington Attorney Generals' Office, and the U.S. Department of Justice have reached tentative agreement under which a revised schedule for the completion of SST interim stabilization will be implemented, not through the Tri-Party Agreement, but through a consent decree filed with the United States District Court for the Eastern District of Washington.

Once the interim stabilization consent decree is finalized, the U. S. Environmental Protection Agency (EPA), DOE, and Ecology have agreed to delete interim stabilization program requirements from the scope of the Tri-Party Agreement. A copy of a draft TPA change request deleting current TPA interim stabilization requirements is attached.

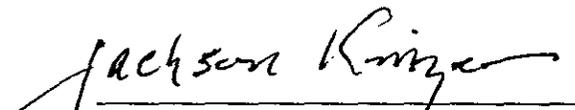
This change request will be submitted to the public for review and comment for a 60-day period at the same time as public comment on the State and DOE's proposed interim stabilization consent decree (i.e., There will be one unified public comment process).

Copies of these proposed agreements will be forwarded to the Tribes and Hanford stakeholders, and will be available for review at the Tri-Parties public information repositories. Specific public comment dates will be coordinated to ensure Hanford Advisory Board opportunity for review and comment. DOE, Ecology and EPA expect that final signatures will take place by May 28, 1999.

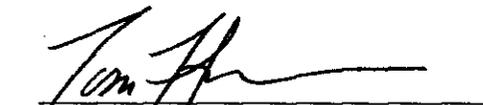
Tentative Agreement on the Removal of Hanford High Level Waste Tank
Interim Stabilization Requirements from the Scope of the Hanford Federal
Facility Agreement and Consent Order

DOE, Ecology, and EPA further agree that this Tri-Party Agreement modification will become final unless DOE, Ecology, or EPA determines that changes are necessary as a result of public comment. Should DOE, Ecology, or EPA determine that changes to proposed modifications are necessary and unanimous agreement is not reached, the changes will be subject to dispute. In this event, DOE, Ecology and EPA will attempt to resolve the dispute, beginning at the Inter Agency Management Integration Team (IAMIT) level as provided for in Article VIII of the Tri-Party Agreement.

Signed this 24th day of February, 1999


Jackson Kinzer, Acting Manager
Office of River Protection
U. S. Department of Energy


James C. Hall, Acting Manager
U. S. Department of Energy
Richland Field Office


Tom Fitzsimmons, Director
State of Washington
Department of Ecology


Chuck Clarke, Regional Administrator
U. S. Environmental Protection Agency
Region 10

Change Number - DRAFT - M-41-99-01	Federal Facility Agreement and Consent Order Change Control Form Do not use blue ink. Type or print using black ink.	Date 02/23/99									
Originator Ecology		Phone									
Class of Change <input checked="" type="checkbox"/> I - Signatories <input type="checkbox"/> II - Executive Manager <input type="checkbox"/> III - Project Manager											
Change Title Deletion of uncompleted milestones and target dates from the Department of Energy's high-level radioactive waste tank interim stabilization program (M-41-00) and interim milestone M-40-07 from the scope of the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement).											
Description/Justification of Change Following difficulties which have repeatedly delayed the completion of interim stabilization of the Department of Energy's (DOE's) high level radioactive waste (HLW) Single-Shell Tanks (SST), DOE and Ecology have agreed that requirements for completion should be filed as a consent decree with the United States District Court for the Eastern District of Washington (See Consent Decree # _____, _____ date _____). Consequently, DOE, Ecology, and EPA have agreed to delete the SST interim stabilization program from the scope of the Tri-Party Agreement. In doing so, the remaining milestones and target dates within TPA major milestone series M-41-00, and TPA interim milestone M-40-07, are hereby deleted. This deletion and other associated TPA modifications are as follows. This Change Request makes the following Tri-Party Agreement modifications (shown only as either shaded new text or deleted strikeout text): 1. Tri-Party Agreement Appendix A (Definition of Terms): Interim Stabilization (as pertains to Single-Shell Tanks): Is the removal of pumpable supernatant and interstitial liquid from SST systems into DST systems. As much liquid as practicable will be removed. Supernatant is free standing liquid. Interstitial liquid is that liquid in the waste matrix contained within the pore spaces of the salts and sludges, some of which is capable of gravity drainage while the rest is held by capillary forces.											
Impact of Change Deletion of uncompleted milestones and target dates within DOE's SST interim stabilization program (M-41-00 series) and Interim Milestone M-40-07 from the scope of the Tri-Party Agreement											
Affected Documents The Hanford Federal Facility Agreement and Consent Order, as amended, and Hanford site internal planning, work authorization, and budget documents (e.g., Project Management Plans, Baseline Change Control Documents and Multi Year Work Plans).											
Approvals <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; border-top: 1px solid black; border-bottom: 1px solid black;">DOE</td> <td style="width: 15%; border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> <td style="width: 45%; border-top: 1px solid black; border-bottom: 1px solid black;"> <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved </td> </tr> <tr> <td style="border-top: 1px solid black; border-bottom: 1px solid black;">EPA</td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"> <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved </td> </tr> <tr> <td style="border-top: 1px solid black; border-bottom: 1px solid black;">Ecology</td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> <td style="border-top: 1px solid black; border-bottom: 1px solid black;"> <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved </td> </tr> </table>			DOE	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	EPA	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	Ecology	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved
DOE	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved									
EPA	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved									
Ecology	Date	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved									

Description/Justification of Change Cont.

Remaining incomplete milestones and associated target dates for interim stabilization of Single Shell Tanks are deleted from the scope of the Interim Stabilization Agreement. Specific milestones and target dates are provided below. Agreement Appendix D, Work Schedule. Regulatory commitments under the interim stabilization program may be found in the Consent Decree (DOE and Ecology, etc.)

2. Agreement Action Plan Section 11.8: TANK WASTE REMEDIATION SYSTEM CRITICAL PATH PROCESS

Tank waste remediation milestones will be established using a critical path process as described in this section. The tank waste remediation program will be established and managed as an integrated system and shall include all activities associated with waste characterization, retrieval/closure, tank stabilization, pretreatment, treatment of high-level and low-level tank waste, acquisition of new tanks, and the multi-purpose storage complex. The parties will develop detailed operating procedures and implement the critical path milestone system on a trial basis, in April 1994, with full implementation by September 30, 1994.

3. Agreement Appendix D: WORK SCHEDULE

M-41-00 COMPLETE SINGLE SHELL TANK INTERIM STABILIZATION. 9/30/2000

LEAD AGENCY: ECOLOGY COMPLETE INTERIM STABILIZATION ACTIVITIES FOR ALL SINGLE SHELL TANKS EXCEPT 241-C-106 (TO BE RETRIEVED IN ACCORDANCE WITH MILESTONE M-45-03). COMPLETE INTRUSION PREVENTION FOR ALL SINGLE SHELL TANKS EXCEPT 241-C-106.

THIS IS DEPENDENT UPON THE FOLLOWING ASSUMPTIONS:

(1) SAFETY STUDIES WILL BE COMPLETED WITH THE OBJECTIVE OF ALLOWING PUMPING IN ACCORDANCE WITH INTERIM MILESTONES.

(2) WORK COMMENCES IN THE TANK FARMS ON OCTOBER 1, 1993, FOR INTERIM STABILIZATION PREPARATIONS, AS REQUIRED BY THE MILESTONE SCHEDULE. DURING THE STAND DOWN IN TANK FARMS, SCHEDULES FOR THE FOLLOWING INTERIM MILESTONES MAY BE AFFECTED: M-41-01, M-41-02, M-41-10, M-41-15 AND M-41-16. EVERY EFFORT WILL BE MADE TO RECOVER THE ORIGINAL SCHEDULE AS SPECIFIED BELOW.

INTERIM MILESTONES FOR START OF PUMPING AND TARGET MILESTONES FOR COMPLETION FOR EACH GROUP OF TANKS WILL BE REVIEWED AND AFFIRMED ANNUALLY WITH ECOLOGY AND EPA. UPON START OF PUMPING, EFFORTS TO CONTINUE PUMPING WILL BE CONTINUOUSLY SUPPORTED SO THAT PUMPING IS CONDUCTED AS EXPEDITIOUSLY AS PRACTICAL. IF PUMPING IS INTERRUPTED TO A DEGREE THAT JEOPARDIZES THE TARGET MILESTONE, THE UNIT (PROJECT) MANAGERS SHALL MEET IN AN EFFORT TO AGREE ON A RECOVERY PLAN. IF SUCH

February 23, 1999

Description/Justification of Change Cont.

~~AN AGREEMENT CANNOT BE MADE AT THE UNIT (PROJECT) MANAGER LEVEL, A FORMAL RECOVERY PLAN WILL BE PREPARED AND SUBMITTED TO ECOLOGY AND EPA FOR APPROVAL THAT SUPPORTS THE MAJOR MILESTONE DATE OF SEPTEMBER 2000, IF TECHNICALLY ACHIEVABLE.~~

M 41-22	START INTERIM STABILIZATION OF 6 SINGLE SHELL TANKS.	9/30/1997
M 41-23	START INTERIM STABILIZATION OF 8 SINGLE SHELL TANKS.	3/31/1998
M 41-24	START INTERIM STABILIZATION OF 9 SINGLE SHELL TANKS.	9/30/1998
M 41-25	START INTERIM STABILIZATION OF 3 SINGLE SHELL TANKS.	3/31/1999
M 41-26	START INTERIM STABILIZATION OF 2 SINGLE SHELL TANKS.	9/30/1999
M 41-27	COMPLETE SALT WELL PUMPING OF SINGLE SHELL TANKS.	9/30/2000
M 41-27-T03	COMPLETE SALT WELL PUMPING OF 5 SINGLE SHELL TANKS.	9/30/1998
M 41-27-T04	COMPLETE SALT WELL PUMPING OF 8 SINGLE SHELL TANKS.	9/30/1999
M 41-27-T05	COMPLETE SALT WELL PUMPING OF 16 SINGLE SHELL TANKS.	9/30/2000
M 40-07	COMMENCE OPERATION OF A VAPOR TREATMENT SYSTEM IN TANK 241-C-103.	6/30/1995

~~PROVIDE A REPORT DOCUMENTING OPERATIONAL TEST PROCEDURE RESULTS AND COMMENCE PERMITTED OPERATION OF A VAPOR TREATMENT SYSTEM FOR TANK 241-C-103, UNLESS OTHERWISE AGREED TO BY THE PARTIES FOLLOWING SUBMITTAL OF THE ENGINEERING EVALUATION OF ALTERNATIVES (EEA) FOR TREATMENT OF TANK 241-C-103 VAPOR SPACE. THE EEA WILL DOCUMENT THE NEED AND OPTIONS FOR TREATMENT OF POTENTIALLY HAZARDOUS/TOXIC VAPORS BEING DISCHARGED FROM THE TANK 241-C-103 VAPOR SPACE. ALL PERTINENT CHARACTERIZATION DATA WILL BE CONSIDERED, INCLUDING: METEOROLOGICAL, AREA, SOURCE, PERSONNEL MONITORING, AQUEOUS/ORGANIC LAYER ANALYSIS, VAPOR CHARACTERIZATION, ESTIMATES OF THE VAPOR CHARACTERIZATION AFTER REMOVAL OF THE ORGANIC LAYER, AND THE SCHEDULE FOR THIS REMOVAL. ONCE SELECTED, DESIGN PROCUREMENT, AND PERMITTING WILL BE INITIATED.~~

~~OPERATION OF THIS VAPOR TREATMENT SYSTEM IS ANTICIPATED TO PROVIDE RELIEF FROM WORKER RESTRICTIONS AT TANK 241-C-103 IN REGARD TO NOXIOUS VAPOR EMISSIONS (PROVIDED CHARACTERIZATION OF OTHER C FARM TANKS DOES NOT IDENTIFY OTHER POTENTIAL SOURCES OF NOXIOUS VAPORS).~~

1 TANYA BARNETT, WSBA #17491
2 KATHRYN L. GERLA, WSBA #17498
3 Assistant Attorneys General
4 Attorney General of Washington
5 P.O. Box 40117
6 Olympia, WA 98504-0117
7 (360) 459-6320

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

UNITED STATES
DEPARTMENT OF ENERGY,

Defendant.

NO.

CONSENT DECREE

I. INTRODUCTION

WHEREAS, Plaintiff State of Washington, Department of Ecology ("State") has alleged violations of the Hanford Federal Facility Agreement and Consent Order by Defendant United States Department of Energy ("DOE"); and

WHEREAS, on May 15, 1989, DOE and the Washington Department of Ecology entered into the Hanford Federal Facility Agreement and Consent Order ("HFFACO"). One of the requirements of the HFFACO is that DOE remove liquid waste from several large underground single-shell storage tanks located at DOE's Hanford site. Pumping high-level radioactive waste from single-shell tanks into double shell tanks poses many technical and safety challenges. A

1 number of these challenges have arisen since the HFFACO was signed. DOE has
2 previously requested and the State has agreed to a number of schedule extensions
3 using procedures specified in the HFFACO. The original schedule in the
4 agreement called for pumping the liquid radioactive hazardous waste out of the
5 tanks by 1995. Thereafter, the schedule has been extended several times. The
6 most recent schedule called for the completion of tank pumping by September 30,
7 2000; and

8 WHEREAS, to date, approximately 45% of the liquid wastes originally
9 stored in single-shell tanks have been pumped into double-shell tanks since the
10 tank pumping program began in 1976. The HFFACO contains milestones for
11 transferring the remaining liquid wastes from single-shell tanks into double-shell
12 tanks. Interim milestones M-41-22 and M-41-23 required that pumping be
13 initiated for 6 tanks by September 30, 1997, and for 8 more tanks by March 31,
14 1998. DOE did not meet either of these two milestones, and believes that it will
15 not meet the remainder of the tank pumping milestones; and

16 WHEREAS, the parties wish to resolve this action without litigation and
17 have, therefore, agreed to entry of this Consent Decree without adjudication of the
18 issues contained herein. This Decree is filed to resolve potential litigation between
19 the State and DOE regarding the missed milestones as well as all other remaining
20 milestones in the HFFACO in the interim stabilization series (M-41) and to
21 establish a judicially enforceable schedule for pumping liquid radioactive
22 hazardous waste from single-shell tanks as identified in the schedule in
23 Section IV-A.

24 NOW THEREFORE, it is hereby ordered, adjudged, and decreed as
25 follows:

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. JURISDICTION

The Court has jurisdiction over the subject matter and the parties to this Decree. Venue is proper in the United States District Court for the Eastern District of Washington.

The State of Washington, Department of Ecology enters into this Decree pursuant to Chapter 70.105 RCW and the Resource Conservation and Recovery Act, 42 U.S.C. sec. 6901 et seq.

The United States Department of Energy enters into this Decree pursuant to 42 U.S.C. §§ 6901 et seq.

III. PARTIES BOUND

This Decree applies to and is binding upon the United States Department of Energy, the State of Washington, Department of Ecology, and their successors. DOE remains obligated by this Decree regardless of whether it carries out the terms through agents, contractors, and/or consultants.

IV. WORK TO BE PERFORMED AND SCHEDULE

A. Liquid waste in Hanford's single-shell tanks shall be removed from the single-shell tanks and stored in double-shell tanks according to the schedule set forth in Attachment A to this Decree. The schedule in Attachment A is hereby incorporated by reference into this Decree and is an integral and, with the exception of the projected pumping completion dates, enforceable part of the Decree.

B. **Reporting:** DOE shall, on a quarterly basis, submit to Ecology a written report documenting tank stabilization activities that occurred during the period covered by the report. This written report shall provide the status of progress made during the reporting period and shall include:

1 Site. DOE reserves the right to require Ecology's representatives to be
2 accompanied by an escort while on the Hanford Site. DOE shall provide escorts
3 in a timely manner.

4 VI. AMENDMENT OF DECREE

5 A. Amendment Process.

6 1. This Decree may be amended by mutual agreement of the State
7 and DOE upon approval by the Court. The party proposing the amendment
8 shall provide the proposal in writing to the other party, along with a
9 justification for the amendment. Proposals to amend the schedule shall be
10 submitted in accordance with, and shall be evaluated under the criteria
11 described in, paragraphs B through G, below. Within ten (10) working days
12 of receipt (except as provided in Section VI-F), the other party shall notify
13 the party proposing the amendment whether or not the amendment is
14 acceptable. If the amendment is acceptable, the parties shall submit the
15 amendment to the Court for its approval. If the amendment is not
16 acceptable to the other party, the other party shall explain in writing its
17 reasons for disapproving the amendment. In such an event, the party
18 proposing the amendment may invoke the dispute resolution procedures of
19 this Decree.

20 2. The time periods in Section VI may be extended by mutual
21 agreement of the parties.

22 B. Amendment of Schedule. The schedule in Section IV-A shall be
23 amended only if (1) a request for amendment is timely, and (2) good cause exists
24 for the amendment.
25
26

1 C. **Timeliness.** To be timely, a request must be submitted to the other
2 party either (1) when it is DOE requesting the schedule amendment, within ten
3 (10) working days of a determination by DOE that it is unable to meet the deadline
4 for which the amendment is sought; and (2) when it is the State requesting the
5 schedule amendment, within ten (10) working days of a determination that an
6 amendment is necessary.

7 D. **Good Cause.** "Good cause" for schedule amendment exists when the
8 schedule cannot be met due to circumstances or events either (1) unanticipated in
9 the development of the schedule in Section IV-A of this Consent Decree, or (2)
10 anticipated in the development of the schedule, but which have a greater impact on
11 the schedule than was predicted at the time the schedule was developed (hereafter
12 referred to as "circumstances and events"). However, in any case, good cause
13 does not exist if DOE can nonetheless meet the existing schedule by responding
14 with reasonable diligence to such circumstances or events. Likewise, good cause
15 does not exist if DOE could have met the existing schedule if it had responded
16 with reasonable diligence to the circumstance(s) or event(s) when it occurred.
17 Budget requests, funding levels and efficient management practices are
18 appropriate considerations in determining whether reasonable diligence exists.
19 The exercise of reasonable diligence is not expected to normally require an
20 expenditure of funds beyond those set out in Attachment B to this Decree
21 (Projected Fiscal Year Funding Requirements for Work Required Under this
22 Decree), unless additional expenditures are necessitated by inefficient
23 management practices.

24 1. a. Both parties to this Consent Decree understand that to
25 develop this schedule, assumptions had to be made in the Interim
26 Stabilization Project Plan about events or unforeseen circumstances

1 that might arise which could affect the schedule. As part of this
2 process, further assumptions had to be made about the likelihood of
3 such events or unforeseen circumstances occurring, and if they did
4 occur, what effect that might have on the schedule.

5 b. The schedule assumes that, to some extent, unforeseen
6 events will occur, or unforeseen circumstances will be discovered. A
7 certain amount of "allowance" is built into the interim stabilization
8 project plan underlying the schedule to allow DOE to respond to such
9 events and circumstances and still meet the schedule. However, it is
10 possible that unexpected events and/or circumstances will arise
11 whose effect on the schedule exceeds this allowance.

12 c. If events or circumstances occur that will delay the
13 completion of work beyond the deadlines in the schedule, and the
14 delay cannot be or could not have been avoided by DOE responding
15 to the event or circumstance with reasonable diligence, then "good
16 cause" exists for extending the schedule. Although such events or
17 circumstances cannot, by their nature, be fully anticipated and
18 controlled, the parties can identify in advance three general types of
19 such events and/or circumstances:

20 (1) *Safety concerns.* In the past, unforeseen safety
21 concerns have arisen that have required extending the schedule.
22 Depending on the nature of unforeseen safety concerns and the
23 time required to address those concerns, such safety concerns
24 may constitute "good cause."

25 (2) *Unknown technical obstacles.* The wastes
26 contained within each tank or group of tanks have their own

1 unique characteristics. Sometimes, previously unknown waste
2 characteristics present technical obstacles to pumping the
3 tanks. Depending on the nature of the technical problem and
4 the time required to address the problem, such unknown
5 obstacles may constitute "good cause."

6 (3) *Equipment failures.* The assumptions underlying
7 the schedule anticipate that some failures of certain kinds of
8 equipment will occur. DOE has built time into the schedule to
9 respond to some level of equipment failures. However, it is
10 possible that equipment failures will take place beyond what is
11 anticipated in the assumptions underlying the schedule.
12 Depending on the frequency and type of equipment failures,
13 such failures may constitute "good cause."

14 2. In any request for amendment, DOE shall identify the good
15 cause that, in its view, justifies amendment. If the State agrees that good
16 cause exists, the parties shall agree to an appropriate amendment. If the
17 State does not agree that good cause exists, DOE may invoke the dispute
18 resolution process set forth in Section VIII of this Decree.

19 E. **Force Majeure.** The parties agree that some events are of such a
20 magnitude that they will be presumed to justify amendment. Extensions of the
21 schedule shall be equal to the number of days during which work is interrupted
22 due to *force majeure* events. These events include, but are not limited to:

23 1. Acts of God, fire, war, insurrection, civil disturbance, or
24 explosion;

25 2. Significant adverse weather conditions that could not have
26 been reasonably anticipated;

1 3. Restraint by court order;

2 4. Inability to obtain, at reasonable cost and after exercise of
3 reasonable diligence, any necessary authorizations, approvals, permits or
4 licenses due to action or inaction of any governmental agency or authority
5 other than DOE or its authorized contractors;

6 5. Any strike or similar work stoppage resulting from labor
7 dispute; and

8 6. Unavailability or insufficiency of funds due to a shut-down of
9 the federal government or to the absence of an approved budget for DOE by
10 the beginning of a fiscal year.

11 Any amendment requested on the grounds that one of the events listed
12 above has occurred will be granted unless the State does not agree that a *force*
13 *majeure* event has occurred. DOE may pursue dispute resolution regarding this
14 determination under Section VIII of this Decree. If the dispute is not resolved by
15 mutual agreement of the parties, DOE may seek court review, and if the Court
16 determines that, under the pertinent facts and circumstances, the event does
17 constitute a *force majeure* event, the Court shall approve the requested extension.

18 Whenever a *force majeure* event occurs, DOE shall exercise its best efforts
19 to complete the affected work in accordance with the original schedule.

20 **F. Unforeseen Safety Concerns.** If a previously unknown safety
21 concern raised as an unreviewed safety question arises that affects or will likely
22 affect the schedule in Section IV-A, DOE shall take the following steps:

23 1. Within three (3) working days of the declaration of an
24 unreviewed safety question, notify Ecology that an issue exists, the nature
25 of the issue, and any actions taken in accordance with the facility
26 authorization procedures.

1 2. No more than 45 days after the notification in Section VI-F-1,
2 DOE shall develop and submit to Ecology a Safety Issue Resolution Plan
3 (SIRP) that identifies the following:

4 a. the issue and its technical basis, its probability of
5 occurrence, consequences of occurrence, and any threat to human
6 health and the environment that would result if DOE adhered to the
7 schedule in Section IV-A in light of the safety issue;

8 b. the impacts that the safety issue will have on the
9 schedule in Section IV-A;

10 c. required administrative, procedural, technical, and
11 operational issues that must be resolved in order for work to continue;

12 d. a schedule and necessary resources to resolve the safety
13 issue in order to allow the resumption of work in the event that work
14 was stopped because of the safety issue;

15 e. the management process to be used to resolve the safety
16 issue;

17 f. any pertinent information not already provided to
18 Ecology; and

19 g. a request for a schedule amendment as set forth in
20 Section VI-G below. In the event that the impact on the schedule
21 cannot be adequately determined until the analysis of the unreviewed
22 safety question is completed, DOE will advise Ecology of its initial
23 estimate of schedule impact and a date by which it will submit the
24 required request for schedule amendment.

25 3. If Ecology agrees, based on the information provided in the
26 SIRP and any other information, whether oral or written, provided by DOE,

1 that good cause exists for a schedule amendment, the mutual agreement of
2 the parties to the amendment will be sent to the Court for approval. In the
3 event that Ecology does not agree that good cause exists, DOE may invoke
4 the dispute resolution procedures in Section VIII.

5 **G. Proposals to Amend.** Any proposal to amend the schedule shall be
6 submitted in writing to the other party and shall specify the following:

- 7 1. The particular deadline(s) for which the amendment is sought;
- 8 2. The length of the extension(s) sought;
- 9 3. The good cause or *force majeure* event that is the basis for the
10 amendment; and
- 11 4. Any other requirement of this Consent Decree or of the
12 HFFACO that would be affected if the proposal to amend the schedule were
13 accepted.

14 Any proposal to amend any other provision of this Consent Decree shall be in
15 writing and shall identify:

- 16 1. Those portions of the Consent Decree to be amended;
- 17 2. The proposed new language to be included in the Consent
18 Decree; and
- 19 3. The reason for the proposed amendment.

20 VII. FUNDING

21 A. Funding relating to implementing the schedule.

22 DOE agrees to advise the State of its efforts to obtain the appropriated
23 funding necessary to implement this Decree. If DOE asserts that appropriated
24 funds necessary to fulfill an obligation under this Decree are not available, the
25 parties agree to utilize the dispute resolution procedures of Section VIII to discuss
26

1 whether the State will, in its sole discretion, agree to make appropriate
2 adjustments to the deadlines for obligations that require the payment or obligation
3 of such funds. If no agreement is reached, the Parties agree that in any judicial
4 proceeding to enforce the terms of this Decree and/or to find DOE in contempt for
5 failure to comply or for delay in compliance with such terms, DOE may raise as a
6 defense that its failure or delay was caused by the unavailability of appropriated
7 funds. The State disagrees that lack of appropriations or funding is a valid
8 defense. However, DOE and the State agree and stipulate that it is premature at
9 this time to raise and adjudicate the existence of such a defense. This provision
10 does not constitute a waiver by DOE that its obligations under this Decree are
11 subject to the provisions of the Anti-Deficiency Act, 31 U.S.C. § 1341, nor does it
12 constitute a waiver by the State that DOE's obligations under this Decree are not
13 subject to the Anti-Deficiency Act.

14 **B. Funding relating to milestones in the HFFACO.**

15 If DOE does not have adequate funding to comply with this Decree and all
16 of the requirements of the HFFACO, DOE will likely request extensions of some
17 current HFFACO milestones for work that it believes is of a lower priority than
18 the work to be performed under this Decree. The State will review such requests
19 in good faith and will grant such requests when it deems it appropriate to do so
20 under the terms of the HFFACO, and, when required, EPA concurs.

21 Nothing in the above paragraph shall be used to constrict in any way
22 DOE's, EPA's, or Ecology's rights under the HFFACO. In particular, nothing in
23 the above paragraph shall supercede or amend the procedures set forth in
24 paragraphs 148 and 149 of the HFFACO.

1 **VIII. RESOLUTION OF DISPUTES**

2 A. The parties recognize that a dispute may arise regarding the proper
3 interpretation of this Decree or whether or how the Decree should be amended. If
4 such a dispute arises, the parties will endeavor to settle it by good faith
5 negotiations among themselves. If the parties cannot resolve the issue within a
6 reasonable time, not to exceed forty calendar days, then any party may seek
7 appropriate relief from the Court. Either party may request a meeting among
8 technical and/or management representatives from their respective organizations,
9 including the Interagency Management Integration Team at any time during the
10 dispute resolution.

11 B. If the dispute is not resolved, either party may petition the Court for
12 relief. Motions seeking appropriate relief from the Court shall be filed within
13 thirty (30) calendar days of the end of the period provided for in Section VIII-A.

14 C. **Applicability Of Deadlines During Dispute Resolution.** Deadlines
15 established in the schedule in Section IV-A shall continue in force unless and until
16 changed by the Court. Notwithstanding the foregoing sentence, if DOE has
17 requested an extension of a deadline, DOE shall not be deemed to be in violation
18 of that deadline while DOE's request is being evaluated. This period shall run
19 from the time of DOE's notification in Section VI-A through the date on which the
20 Court acts on the request.

21 **IX. COVENANT NOT TO SUE**

22 A. The State hereby covenants not to bring any civil, judicial, or
23 administrative action against DOE, its officials or employees, or its contractors or
24 their subcontractors, their officials, or employees, with respect to matters covered
25 by this Decree. "Matters covered" by this Decree are requirements for interim
26

1 stabilizing, or removing pumpable liquid from, 29 single-shell tanks at the
2 Hanford Site. This covenant not to sue is conditioned upon DOE's complete
3 performance of its obligations under this Decree.

4 B. This Decree in no way affects or relieves DOE of responsibility to
5 comply with any other State, Federal, or local law or regulation. Both parties
6 retain all of their rights and defenses with respect to matters not covered in this
7 Decree. The State expressly reserves for further action or enforcement and its
8 execution of this Decree does not discharge, release, or in any way affect any
9 right, demand, claim, or cause of action that it has, or may have, regarding DOE's
10 environmental liabilities at the Hanford Site other than the interim stabilization
11 program, including, without limitation, any other alleged noncompliance with the
12 HFFACO, and any other environmental liability caused by or resulting from leaks,
13 releases, or discharges from the single-shell tanks at the Hanford Site.

14 C. Notwithstanding any other provision of this Decree, the State reserves
15 the right to seek amendment of this Decree, or to take action outside of this
16 Decree, if previously unknown information is received, or previously undetected
17 conditions are discovered, and these previously unknown conditions or
18 information together with any other relevant information indicates that the work to
19 be performed and schedule under this Decree are not protective of human health or
20 the environment.

21 X. RETENTION OF JURISDICTION

22 This Court retains jurisdiction over both the subject matter of this Decree
23 and the parties for the duration of the performance of the terms and conditions of
24 this Decree for the purpose of enabling any of the parties to apply to the Court at
25 any time for such further order, direction, sanction or other relief as may be
26

1 necessary or appropriate for the construction or modification of this Decree, or to
2 effectuate or enforce compliance with its terms, or to resolve disputes in
3 accordance with Section VIII, Resolution of Disputes.

4 **XI. CONSTRUCTION AND USE OF CONSENT DECREE**

5 **A. Construction of Consent Decree.** This Consent Decree is the
6 product of negotiation by the parties. Both parties contributed to its drafting. In
7 any dispute over the meaning of any provision of this Consent Decree, the parties
8 shall be treated as having contributed equally to the drafting of that provision.

9 **B. Restrictions On Use In Other Proceedings.** It is DOE's position
10 that, until waiver or exhaustion of its appeal rights regarding a particular milestone
11 under the HFFACO, the State may not bring a judicial action regarding that
12 milestone. The State disagrees with this position. In order to reach agreement on
13 this Consent Decree with the State, without adjudicating this issue, DOE hereby
14 waives its appeal rights under the HFFACO to the Pollution Control Hearings
15 Board with respect to the remaining
16 M-41 milestones for interim stabilization of the single-shell tanks. Moreover, the
17 parties agree that neither this Consent Decree, nor any of its provisions, may be
18 used in any future proceeding by DOE, the State, or any other party to determine
19 or resolve this issue.

20
21 **XII. EFFECT OF DECREE ON HFFACO MILESTONES**

22 Upon entry of this Decree, the State covenants not to enforce the series M-
23 41 Single-Shell Tank Interim Stabilization Milestones and Milestone M-40-07 in
24 the HFFACO. After entry of this Decree, the parties, with EPA's concurrence,
25 will amend the HFFACO to delete the M-41 milestones in their entirety and to
26 delete Milestone M-40-07.

1 Nothing in this Consent Decree shall give the Court jurisdiction over any of
2 the HFFACO milestones.

3 **XIII. EFFECTIVE AND TERMINATION DATES**

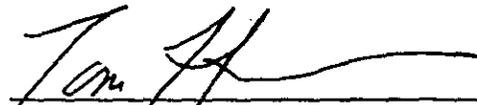
4 A. This Consent Decree shall be effective upon the date of its entry by
5 the Court.

6 B. This Consent Decree shall terminate when all work to be performed
7 under the Decree has been completed. The parties will notify the Court of this
8 event by a motion to terminate the Consent Decree.

9
10 DATED this _____ day of _____, 19 ____.

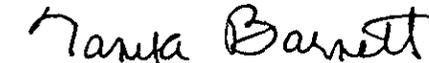
11
12
13 _____
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26

1 FOR THE STATE OF
2 WASHINGTON
3 DEPARTMENT OF ECOLOGY

4 
5 TOM FITZSIMMONS
6 Director

7 Washington Department of Ecology
8 300 Desmond Drive
9 Lacey, WA 98503

10 CHRISTINE O. GREGOIRE
11 Attorney General

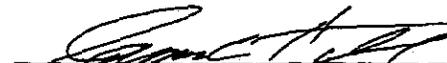
12 
13 TANYA BARNETT, WSBA #17491
14 Assistant Attorney General

15 
16 KATHRYN L. GERLA, WSBA
17 #17498
18 Assistant Attorney General

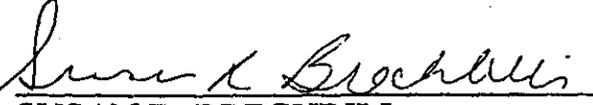
19 Attorneys for Plaintiff
20 Attorney General of Washington
21 Ecology Division
22 P.O. Box 40117
23 Olympia, WA 98504-0117
24 (360) 459-6320

26 v. Interim fed suit/consent decree final

FOR THE UNITED STATES
DEPARTMENT OF ENERGY


JAMES C. HALL
Acting Manager
Richland Operations Office


JACKSON E. KINZER
Acting Manager
Office of River Protection


SUSAN R. BRECHBILL
Chief Counsel
Richland Operations Office

U.S. Department of Energy
P.O. Box 550
Richland, WA 99502

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural
Resources Division


MICHAEL J. ZEVENBERGEN
WSBA #21292

Attorney For Defendant
United States Department of Justice
Environmental Defense Section
c/o NOAA/Damage Assessment
7600 Sand Point Way, N.E.
Seattle, WA 98115-0070
(206) 526-6607

**CONSENT DECREE
ATTACHMENT A**

Following is the schedule for pumping liquid waste from the remaining twenty-nine (29) single-shell tanks. This schedule is enforceable pursuant to the terms of the Decree except for the "Projected Pumping Completion Dates" which are estimates only and not enforceable.

	Tank Designation	Pumping Initiated	Projected Pumping Completion Date
1.	T-104	Already initiated	May 30, 1999
2.	T-110	Already initiated	May 30, 1999
3.	SX-104	Already initiated	December 30, 2000
4.	SX-106	Already initiated	December 30, 2000
5.	S-102	July 30, 1999	March 30, 2001
6.	S-106	July 30, 1999	March 30, 2001
7.	S-103	July 30, 1999	March 30, 2001
8.	U-103*	June 15, 2000	April 15, 2002
9.	U-105*	June 15, 2000	April 15, 2002
10.	U-102*	June 15, 2000	April 15, 2002
11.	U-109*	June 15, 2000	April 15, 2002
12.	A-101	October 30, 2000	September 30, 2003
13.	AX-101	October 30, 2000	September 30, 2003
14.	SX-105	March 15, 2001	February 28, 2003
15.	SX-103	March 15, 2001	February 28, 2003
16.	SX-101	March 15, 2001	February 28, 2003
17.	U-106*	March 15, 2001	February 28, 2003
18.	BY-106	July 15, 2001	June 30, 2003
19.	BY-105	July 15, 2001	June 30, 2003
20.	U-108	December 30, 2001	August 30, 2003
21.	U-107	December 30, 2001	August 30, 2003

	Tank Designation	Pumping Initiated	Projected Pumping Completion Date
22.	S-111	December 30, 2001	August 30, 2003
23.	SX-102	December 30, 2001	August 30, 2003
24.	U-111	November 30, 2002	September 30, 2003
25.	S-109	November 30, 2002	September 30, 2003
26.	S-112	November 30, 2002	September 30, 2003
27.	S-101	November 30, 2002	September 30, 2003
28.	S-107	November 30, 2002	September 30, 2003
29.	C-103	No later than December 30, 2000, DOE will determine whether the organic layer and pumpable liquids will be pumped from Tank C-103 together or separately, and will establish a deadline for initiating pumping of this tank. The parties will incorporate the initiation deadline into this schedule as provided in Section VI of the Decree.	

*Tanks containing organic complexants.

Completion of Interim Stabilization. DOE will complete interim stabilization of all 29 single-shell tanks listed above by September 30, 2004.

Percentage of Pumpable Liquid Remaining to be Removed.

93% of Total Liquid	9/30/1999
38% of Organic Complexed Pumpable Liquids	9/30/2000
5% of Organic Complexed Pumpable Liquids	9/30/2001
18% of Total Liquid	9/30/2002
2% of Total Liquid	9/30/2003

The "percentage of pumpable liquid remaining to be removed" is calculated by dividing the volume of pumpable liquid remaining to be removed from tanks not yet interim stabilized by the sum of the total amount of liquid that has been pumped and the pumpable liquid that remains to be pumped from all tanks.

The parties to this Decree recognize that the "remaining pumpable liquids" volume is a best projection and may vary. By October 31, 1999 and each year thereafter until the work is completed, the DOE will include in its final quarterly report for the fiscal year the following information:

- The volume of pumpable liquid actually removed for the previous year;
- Cumulative volume to date.

This information will be utilized to assess compliance with the milestones above. Also included in this quarterly report will be an updated projection of the pumpable liquids remaining in the tanks addressed by this Decree. This updated projection will be used to assess future compliance with these milestones. The current projection is that the tanks contain approximately 6.2 million gallons of "remaining pumpable liquid." The addition of dilution water to tanks shall not be counted towards the pumpable liquid volume or the liquid volume remaining to be removed.

DOE currently estimates approximately 900,000 gallons of organic complexed pumpable liquids are contained in tanks U-103, U-105, U-102, U-109, and U-106.

Definition of "Initiate." For purposes of this Decree, tank pumping is "initiated" when actual pump operation has commenced, and the pumping achieves a 60% operating efficiency over a 72-hour consecutive period, and transfers a total of not less than 500 gallons.

Definition of "Interim Stabilized." For purposes of this Decree, a single-shell tank has been "interim stabilized" and tank pumping may be discontinued when the tank contains less than 50,000 gallons of drainable interstitial liquid and less than 5,000 gallons of supernatant liquid. In addition, if jet pumping is used,

the pump flow must be at 0.05 gpm or less before pumping may be discontinued. If a major equipment failure occurs at a tank that contains less than 50,000 gallons of drainable interstitial liquid and less than 5,000 gallons of supernatant, then DOE may, after consulting with Ecology, consider the tank interim stabilized.

**CONSENT DECREE
ATTACHMENT B**

**PROJECTED FISCAL YEAR FUNDING REQUIREMENT
FOR WORK REQUIRED UNDER THIS DECREE**

FY99	\$29,471,000
FY00	35,052,000
FY01	32,841,000
FY02	30,176,000
FY03	23,254,000
FY04	9,372,000